

11 October 1978

STAT MEMORANDUM FOR: [REDACTED]  
Assistant General Counsel

STAT FROM : [REDACTED]  
Assistant General Counsel

SUBJECT : S.2525 - Proposed Intelligence Charter  
Legislation - Title IV, CIA

1. This is in reply to your memorandum of 26 September 1978 requesting my comments on the following questions:

a. Is it necessary or advisable, and what would be the adverse effects otherwise, to reinstate Section 421(a)(5) (p. 9 of the 9/22/78 mark-up) regarding authority to rent premises, etc., despite the general procurement language of Section 422(a)?

b. Is it necessary or advisable, and what would be the adverse effects otherwise, to insert language in Section 421(a)(14) (p. 11) authorizing payment of library membership dues, an authority now included in Section 8(a)(1) of the CIA Act of 1949?

c. What modifications would be appropriate to deal with the legal status of employees of proprietaries?

2. I believe that it would be advisable to reinstate the specific language excised from section 421(a)(5). Reintroduction of the language would be beneficial in two respects. First, reinstating the language in Title IV would eliminate the possibility of any conflicting or adverse conclusions which might be reached as a result of such language being specifically omitted from our new charter legislation. While it is true that these conclusions could be minimized or eliminated by insuring that the legislative history of this section reflects that a change was not intended,. I believe we have less control over what Congress will insert in the legislative history than we do over the language of the Act itself. Secondly, I believe that spelling out specific statutory authorities in this area would avoid any conflicts with existing statutory authorities, regulations and Comptroller General opinions which presently exist and regulated the acquisition, rental and disposal of real

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property. Finally, if this language is reintroduced into Title IV, it should, in my view, be placed in section 422 rather than in section 421. Section 421(a) does not contain a "notwithstanding" clause similar to that contained in section 422(e). Thus, if the language is reintroduced in section 421 it is susceptible to be altered or repealed by subsequent statutes or regulations issued by Government agencies who have authority over the acquisition, rental and disposal of real property. Notwithstanding the above, however, the failure to put this specific language either in section 421 or 422 will not, in my opinion, materially impact on the Agency's ability to perform its mission if we insure that the legislative history reflects that this section is intended to incorporate all those authorities previously contained in section 8 of the CIA Act of 1949, as amended.

3. My examination of the question of library membership dues has led me to believe that its elimination from our statutory authorities would not adversely impact on the Agency. There are existing Comptroller General opinions which suggest that general appropriations may be utilized for association or library dues when the membership is in the name of the Federal agency and the agency has determined that it is necessary for the performance of the agency's mission. The specific inclusion of such language in the Agency's authorities would be helpful, however, and eliminate any confusion or difficulty which may occur in the future.

4. Finally, the question of the legal status of employees of proprietaries. A relatively simple amendment to Section 421(a)(10) of S.2525 would, perhaps, solve this problem. I therefore propose that this section be amended as follows:

"Establish and operate proprietaries to support Agency operations, and in accordance with regulations established by the Director determine when individuals associated with such proprietaries shall be considered Federal employees for the purpose of benefits or entitlements established under this Act or under chapter 83 of Title 5, U.S.C."

This authority should enable the Director to differentiate between employees or notional proprietaries (who would probably qualify as Federal employees) and employees of

large commercial entities who would be considered employees of a private commercial entity. I suggest that we informally approach the Director, Bureau of Retirement, Insurance and Occupational Health to get his views on the extent to which such language would impact on his authority to determine who qualifies for Civil Service Retirement. I expect to be talking with the Director, BRIOH on another matter and will surface this issue in an oblique way.

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